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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,785	02/08/2002	Firouzeh Keshmiri	053182-9007-00	2939
23409	7590	09/22/2004	EXAMINER	
MICHAEL BEST & FRIEDRICH, LLP 100 E WISCONSIN AVENUE MILWAUKEE, WI 53202			GLESSNER, BRIAN E	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/072,785

Applicant(s)

KESHMIRI, FIROUZEH

Examiner

Brian E. Glessner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 is/are allowed.
- 6) ☒ Claim(s) 1,3 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The following office action is in response to the amendment and remarks filed on May 27, 2004. Claims 1-3 and 10 are pending in the application. Claim 2 is allowed and claims 1, 3, and 10 stand rejected as set forth below.

#### ***Claim Rejections - 35 USC § 103***

Claims 1, 3, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitchell, Jr. (3,495,371) in view of Fu et al. (5,494,513).

In regard to claims 1, 3, and 10, Mitchell discloses a frame assembly (figures 7 and 12) for use in construction of a building, the frame assembly is capable of supporting a load, the frame assembly comprising a pair of elongated linear structural members 14' (i.e. first and second members) positioned in spaced apart relationship, at least one elongate linear structural member 16' (i.e. a plurality of elongate parallel members 16' having first and second ends) extending between the spaced apart pair of elongated linear structural members, the first ends of the plurality of members are attached to the first spaced apart member with nails 52 passing through the members and the second ends of the plurality of members are attached to the second spaced apart member with nails 52 passing through the members. The elongate linear structural members are comprised of non-laminated cellular concrete. Mitchell does not specifically disclose that said non-laminated cellular concrete is fiber reinforced. Fu teaches that it is known to make construction elements out of lightweight/cellular concrete products (abstract and column 1, lines 14-23). Fu also teaches the use of fiber reinforcement at column 4, lines 29-31 and column 7, last paragraph. It would have

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been obvious to one having ordinary skill in the art at the time the invention was made to use fiber reinforced cellular concrete for Mitchell's elements, because by using fiber reinforcing, the elements will be stronger and will be less susceptible to cracking, as taught by Fu, column 4, lines 29-31. Further, Mitchell even discloses that the concrete can be cellular concrete or other lightweight mixes, column 1, lines 50-51. Therefore, Mitchell even teaches or suggests the use of other known lightweight concrete mixes. The examiner would also like to point out that Mitchell does not specifically state that the nail is "driven" through the members. However, the examiner would like to state that the nail is passing through the members. Therefore, since the claim only needs to meet the final product, Mitchell meets the claimed limitations.

Finally, the examiner would like to point out that the term "driven" implies a process or method step. Therefore, even though process limitations are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In the instant case, even though the nail may have been placed in the members in a manner other than being driven into the members, Mitchell's product still meets the claimed limitations.

***Allowable Subject Matter***

Claim 2 is allowed.

### ***Response to Arguments***

Applicant's arguments filed May 27, 2004 have been fully considered but they are not persuasive.

The applicant argues that Mitchell does not disclose that the nail is driven into the members. The examiner agrees. However, since the claim only needs to meet the final product, i.e. a nail passing through the members, Mitchell meets the claimed limitations.

Also, the examiner would like to point out that the term "driven" implies a process or method step. Therefore, even though process limitations are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In the instant case, even though the nail may have been placed in Mitchell's members in a manner other than being driven into the members, Mitchell's product still meets the claimed limitations because the final product contains a nail passing through the members.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Glessner whose telephone number is 703-305-0031. The examiner can normally be reached on Monday through Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 703-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian E. Glessner  
Primary Examiner  
Art Unit 3635

B.G.  
September 18, 2004